



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 24 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL 7009 1680 0000 7677 8527
RETURN RECEIPT REQUESTED

Mr. Scott R. Landis
Site Manager
Axalta Coating Systems, LLC
1930 Tremainsville Road
Toledo, Ohio 43613

Re: Notice of Violation
Compliance Evaluation Inspection
OHD005041843

Dear Mr. Landis:

On August 6, 2014, representatives of the U.S. Environmental Protection Agency and the Ohio Environmental Protection Agency inspected the Axalta Coating Systems, LLC (Axalta) facility located in Toledo, Ohio. As a large quantity generator of hazardous waste, Axalta is subject to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (RCRA). The purpose of the inspection was to evaluate Axalta's compliance with certain provisions of RCRA and its implementing regulations related to the generation, treatment and storage of hazardous waste. A copy of the inspection report is enclosed for your reference.

Based on information provided by Axalta, EPA's review of records pertaining to Axalta, and the inspector's observations, EPA has determined that Axalta has unlawfully stored hazardous waste without a permit or interim status as a result of Axalta's failure to comply with certain conditions for a permit exemption under Ohio Admin. Code § 3745-52-34(A)-(C) [40 C.F.R. § 262.34(a)-(c)]. EPA has identified the permit exemption conditions with which Axalta was out of compliance at the time of the inspection in paragraphs 1-2, below.

Many of the conditions for a RCRA permit exemption are also independent requirements that apply to permitted and interim status hazardous waste management facilities that treat, store, or dispose of hazardous waste (TSD requirements). When a hazardous waste generator loses its permit exemption due to a failure to comply with an exemption condition incorporated from Ohio Admin. Code chs. 3745-65 to 68 and 3745-256, the generator: (a) becomes an operator of a hazardous waste storage facility; and (b) simultaneously violates the corresponding TSD requirement. The exemption conditions identified in paragraphs 3-9 are also independent TSD

requirements incorporated from Ohio Admin. Code chs. 3745-65 to 68 and 3745-256. Accordingly, each failure of Axalta to comply with these conditions is also a violation of the corresponding requirement in Ohio Admin. Code chs. 3745-65 to 68 and 3745-256 [40 C.F.R. Part 265] (if the facility should have fully complied with the requirements for interim status), or Ohio Admin. Code chs. 3745-54 to 57 and 3745-205 [40 C.F.R. Part 264] (if the facility should have been permitted).

Finally, EPA has determined that Axalta violated RCRA requirements related to recordkeeping and universal waste, as described in paragraphs 10-11, below.

STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS

At the time of the inspection, Axalta was out of compliance with the following large quantity generator permit exemption conditions:

1. Hazardous Waste Accumulation

Under Ohio Admin. Code § 3745-52-34(A) and (B) [40 C.F.R. § 262.34(a) and (b)], a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status unless the generator has been granted an extension of the 90-day period.

During the inspection of records, the review of several RCRA 90-Day Accumulation Tank and RCRA Pad Inspection Checklists hazardous waste inspection logs documented that on one occasion there was a hazardous waste drum that contained D001 waste that was stored on-site for ninety-four days (four days past the allowable ninety day period). The inspection logs documented that Axalta personnel (Robert Patton) inspected and documented that the date of the oldest container was 10/15/12. The hazardous waste stream in the drum was identified by Mr. Landis and was subsequently matched up with manifest # 004490916 FLE that had a ship date of 1/17/13, which indicated when the drum dated 10/15/12, was shipped off-site. Axalta maintained waste with accumulation dates greater than 90 days and was not granted an extension of the 90-day period. Since, the off-site shipment of the above-referenced hazardous waste was confirmed through Axalta and the identified manifest during the inspection, no further actions are necessary to comply with this condition.

2. Hazardous Waste Container Labeling

Under Ohio Admin. Code § 3745-52-34(A)(3) [40 C.F.R. § 262.34(a)(3)], a large quantity generator must label or clearly mark each container holding hazardous waste with the words "Hazardous Waste."

During the inspection of the Hazardous Waste Building, there was one 1-gallon container that held pure mercury waste, as stated by Mr. Landis. The container was labeled as "Universal Waste Mercury", was dated 7/24/14, and was closed. The one 1-gallon container was not labeled with the words "Hazardous Waste".

The permit exemption conditions identified below in paragraphs 3-9 are also independent TSD requirements violated by Axalta:

3. Training

A large quantity generator of hazardous waste must have a program of classroom instruction or on-the-job training that teaches facility personnel to perform their duties in a way that ensures the facility's compliance with requirements of RCRA. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-16(A) [40 C.F.R. §§ 262.34(a)(4) and 265.16(a)]. Facility personnel must successfully complete this training program within six months after the date of their employment or assignment to a facility or to a new position at a facility, and must take part in an annual review of this initial training required in paragraph (A) of this rule during each period from January first to December thirty-first. The review must occur within fifteen months after the previous review. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-16(B) and (C) [40 C.F.R. §§ 262.34(a)(4) and 265.16(b) and (c)].

With respect to this training program, a large quantity generator must maintain the following documents and records at its facility:

Records that document that the training or job experience described above has been given to and completed by facility personnel. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-16(D)(4) [40 C.F.R. §§ 262.34(a)(4) and 265.16(d)(4)].

During the inspection of records, the review of the facility's RCRA training records indicated that Keith Johnson was not trained timely (last RCRA trained on 3/21/13) in 2014.

4. Contingency Plan Content

A large quantity generator must have a contingency plan that must describe the actions facility personnel must take to comply with rules 3745-65-51 and 3745-65-56 of the Administrative Code in response to fires, explosions, or any unplanned sudden or non-

sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(A) [40 C.F.R. §§ 262.34(a)(4) and 265.52(a)].

The contingency plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and Ohio EPA and local emergency response teams to coordinate emergency services, pursuant to rule 3745-65-37 of the Administrative Code. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(C) [40 C.F.R. §§ 262.34(a)(4) and 265.52(c)].

The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see rule 3745-65-55 of the Administrative Code), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(D) [40 C.F.R. §§ 262.34(a)(4) and 265.52(d)].

The contingency plan must include a list of all emergency equipment at the facility [such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment], where this equipment is required. This list must be kept up to date. In addition, the contingency plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-52(E) [40 C.F.R. §§ 262.34(a)(4) and 265.52(e)].

During the inspection of records, the review of the facility's contingency plan indicated that there were no home addresses and no home phone numbers listed in the plan for both identified emergency coordinators. There was no described actions for response to fires, spills or explosions in the plan. Mr. Landis stated that there were documented procedures for facility personnel response to fires, spills and explosions, but were not placed into the plan. There was documentation provided that described the types and locations for the facility's decontamination (emergency shower and eye wash combined units) equipment, but that documentation was not located in the plan. There was no description or locations described in the plan for the facility's spill control equipment. There was documentation provided that described the types and locations for the facility's fire protection equipment, but that documentation was not located in the plan.

5. Contingency Plan Copies

A large quantity generator must ensure that a copy of the contingency plan and all revisions to the plan shall be submitted to all local police departments, fire departments,

hospitals, and Ohio EPA and local emergency response teams that may be requested to provide emergency services. *See* Ohio Admin. Code §§ 3745-52-34(A)(4) and 3745-65-53(B) [40 C.F.R. §§ 262.34(a)(4) and 265.53(b)].

During the inspection of records, the review of the facility's contingency plan, and the review of Axalta's submitted correspondence dated August 7, 2014, there was no documentation provided that indicated that the plan had been sent to the local police and hospital.

6. Weekly Container Inspections

A large quantity generator must inspect areas where containers are stored, at least once during the period from Sunday to Saturday, looking for leaks and for deterioration caused by corrosion or other factors. The generator must record inspections in an inspection log or summary. *See* Ohio Admin. Code §§ 3745-52-34(A)(1)(a) and 3745-66-74 [40 C.F.R. §§ 262.34(a)(1)(i) and 265.174].

During the inspection of records, the review of the facility's weekly inspections for the Hazardous Waste Building indicated that the following documented period indicated missed weekly inspections: 2/18/13 to 3/4/13.

7. Daily Tank Inspections

An owner or operator must inspect, where present, at least once each operating day: data gathered from monitoring and leak-detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design. *See* Ohio Admin. Code §§ 3745-52-34(A)(1)(b) and 3745-66-95(A) [40 C.F.R. §§ 262.34(a)(1)(ii) and 265.195(a)].

Except as noted under paragraph (C) of this rule, the owner or operator must inspect at least once per operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). *See* Ohio Admin. Code §§ 3745-52-34(A)(1)(b) and 3745-66-95(B) [40 C.F.R. §§ 262.34(a)(1)(ii) and 265.195(b)].

The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (A) and (B) of this rule. *See* Ohio Admin. Code §§ 3745-52-34(A)(1)(b) and 3745-66-95(G) [40 C.F.R. §§ 262.34(a)(1)(ii) and 265.195(g)].

During the inspection of records, the review of the daily tank inspections for Tank W-10 and Tank W-11 indicated that the following documented periods indicated missed daily inspections: 5/5/13 to 5/7/13; 4/26/13 to 4/27/13; 2/23/13 to 3/3/13; 1/10/12 to 1/14/12; and 12/17/11.

8. Secondary Containment and Detection of Releases

Secondary containment systems must be: capable of detecting and collecting releases and accumulated liquids until the collected material is removed. *See* Ohio Admin. Code §§ 3745-52-34(A)(1)(b) and 3745-66-93(B)(2) [40 C.F.R. §§ 262.34(a)(1)(ii) and 265.193(b)(2)].

To meet the requirements of paragraph (B) of this rule, secondary containment systems must be provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within twenty-four hours. *See* Ohio Admin. Code §§ 3745-52-34(A)(1)(b) and 3745-66-93(C)(3) [40 C.F.R. §§ 262.34(a)(1)(ii) and 265.193(c)(3)].

During the inspection of records, the review of the daily tank inspections for Tank W-10 and Tank W-11 indicated that the following documented periods indicated missed daily inspections: 5/5/13 to 5/7/13; 4/26/13 to 4/27/13; 2/23/13 to 3/3/13; 1/10/12 to 1/14/12; and 12/17/11.

9. Subpart BB Recordkeeping Requirements

Owners and operators must record the following information in the facility operating record: *See* 40 C.F.R. §§ 262.34(a)(1)(ii) and 265.1064(b), (g), and (h).

During the inspection of records, I conducted a Subpart BB inspection and verified that the associated equipment (hazardous waste tank system for tanks W-10/W-11 including their ancillary equipment) is identified and tagged on-site, and that leak detection and repair (LDAR) monitoring is conducted and documented. However, the LDAR program documentation had to be emailed from personnel located at the Mount Clemens, Michigan facility, and thus was not kept with the facility's records on-site. Axalta submitted two emails dated August 6, 2014, to EPA, which documented retention of the LDAR program documentation on-site at the Axalta Toledo, Ohio facility. Thus, no further actions are necessary to comply with this condition and requirement for Subpart BB.

Summary: By failing to comply with the conditions for a permit exemption, above, Axalta became an operator of a hazardous waste storage facility, and was required to obtain an Ohio hazardous waste storage permit. Axalta failed to apply for such a permit. Axalta's failure to apply for and obtain a hazardous waste storage permit violated the requirements of Ohio Admin. Code §§ 3745-50-45(A); 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)]. Any failure to comply with a permit exemption condition incorporated from Ohio Admin. Code chs. 3745-65 to 68 and 3745-256 is also an independent violation of the corresponding TSD requirement.

Axalta violated the following generator requirements:

10. Generator Recordkeeping

Under Ohio Admin. Code § 3745-52-40(C) [40 C.F.R. § 262.40(c)], the generator must keep records of any test results, waste analyses, or other determinations made in accordance with rule 3745-52-11 of the Administrative Code for at least three years after the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

During the inspection of records, there was no waste characterization documentation on-site for the waste purple-K dry chemical fire extinguishing agent as stated by Mr. Landis. Then, during the inspection, Mr. Landis found an MSDS on the internet and printed it out for review and on-site retention. Thus, no further actions are necessary to comply with this requirement.

11. Universal Waste Requirement

Under Ohio Admin. Code § 3745-273-14(D)(1) [40 C.F.R. § 273.14(d)(1)], a small quantity handler of universal waste must label or clearly mark universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained with any of the following phrases: "Universal Waste-Mercury-containing Equipment," or "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

Axalta is a small quantity handler of universal waste because it does not accumulate 5,000 kilograms or more of universal waste at any time.

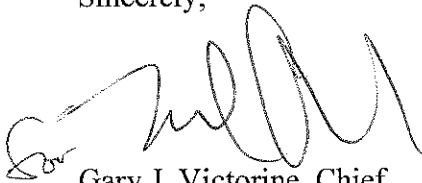
During the inspection of the Hazardous Waste Building, there was one 1-gallon container that held vials that contained mercury from switches as stated by Mr. Landis. The container was labeled as "Universal Waste Mercury", was dated 7/24/14, and was closed. The container of mercury-containing equipment was not labeled with the phrase "Universal Waste-Mercury-containing Equipment," or "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

At this time, EPA is not requiring Axalta to apply for an Ohio hazardous waste storage permit so long as it immediately establishes compliance with the conditions for a permit exemption outlined in paragraphs 2-8, above.

During the inspection, as observed by EPA, and after the inspection, as documented in two August 6, 2014, emails to EPA, you took certain actions to establish compliance with the above condition and on-site recordkeeping requirement (above-referenced in paragraph 9) associated with Subpart BB. Your emails did not include any actions you may have taken related to conditions and requirements in paragraphs 2-8. According to Section 3008(a) of RCRA, EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both. Although this letter is not such an order or a request for information under Section 3007 of RCRA, 42 U.S.C. § 6927, we request that you submit a response in writing to us no later than 30 days after receipt of this letter documenting the actions, if any, you have taken related to paragraphs 2-8, and 11. You should submit your response to Bryan Gangwisch, U.S. EPA, Region 5, 77 West Jackson Boulevard, LR-8J, Chicago, Illinois 60604.

If you have any questions regarding this letter, please contact Mr. Gangwisch, of my staff, at (312) 886-0989 or at gangwisch.bryan@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Victorine", with a stylized flourish at the end.

Gary J. Victorine, Chief
RCRA Branch

Enclosure

cc: Amber Hicks, Ohio EPA-NWDO
amber.hicks@epa.ohio.gov

Bruce McCoy, Ohio EPA-CDO
bruce.mccoy@epa.ohio.gov